

MICHIGAN DEPARTMENT OF CORRECTIONS POLICY DIRECTIVE SUBJECT PRISONERS' ACCESS TO THE COURTS AND LEGAL ASSISTANCE	EFFECTIVE DATE 02/19/1991	NUMBER 05.03.116
	SUPERSEDES PD-DWA-61.01	
	AUTHORITY MCLA 791.203; Administrative Rule 791.6603	
	ACA STANDARDS 2-4230; 2-4323; 2-4325	
	PAGE 1 OF 3	

POLICY STATEMENT:

To ensure that prisoners are permitted to exercise their constitutional right of access to the courts.

POLICY:

- A. Prisoners have a constitutional right of access to the courts. That right may be limited for reasons of security, as set forth in this policy, but it may not be arbitrarily impeded. No retaliation may be taken against a prisoner who has filed a lawsuit or is pursuing litigation. A copy of a lawsuit which a prisoner has filed against the Department or its employees shall not be placed in that prisoner's files.

ACCESS TO ATTORNEYS AND THEIR REPRESENTATIVES; CONFIDENTIALITY

- B. A prisoner shall be allowed access to an attorney(s) and that attorney's authorized representative, such as a paralegal, law student or special investigator. If the attorney's authorized representative is on probation or parole, s/he must receive approval from his or her probation/parole agent as set forth in R 791.6609. This right of access shall include visits during regular business hours and during the prisoner's normal visiting hours. Visits at other times may be allowed if there are special circumstances and the visit has been approved in advance by the Warden or his/her designated representative.
- C. An attorney will be required to present his/her State Bar identification card, and an attorney representative shall have written authorization from the attorney, which names the prisoner or prisoners the attorney wishes to have interviewed by his/her authorized representative on that date. Visits for business purposes by an attorney or attorney representative shall not be counted against a prisoner's allotted number of personal visits. This includes a visit by an attorney with a prisoner who is a witness in a lawsuit.
- D. If requested by the attorney or attorney representative, staff shall arrange a location where the visit can be conducted without being overheard by staff or other prisoners. Whenever possible, such a request should be made in advance of the visit to assist in planning for a private room or other area. Prisoners who are limited to non-contact visiting shall be allowed a contact visit with an attorney or attorney representative, upon request of the attorney.
- E. A prisoner in general population or protective segregation shall be allowed reasonable telephone access to his/her attorney as a part of the prisoner's regular telephone usage. Additional calls, or calls outside normal hours, may be authorized by the Warden or his/her designee if requested by an attorney. A prisoner in administrative, punitive or temporary segregation shall be allowed to telephone his/her attorney only upon request of the attorney to the Warden or his/her designee. Telephone calls between prisoners and attorneys which are not part of a prisoner's regular telephone usage shall be placed by a staff member but shall not be listened to by staff.
- F. A prisoner shall also have the right to carry on confidential and uncensored correspondence with his/her attorney, the courts, and legal assistance organizations such as the American Civil Liberties Union, the State Appellate Defender's Office and Prison Legal Services. For additional information on legal correspondence, see 05.03.118, "Prisoner Mail," and R 791.6603. An attorney shall be permitted to provide a single stamped self-addressed envelope to his/her client in correspondence sent to that prisoner-client.

DOCUMENT TYPE POLICY DIRECTIVE	EFFECTIVE DATE 02/19/1991	NUMBER 05.03.116	PAGE 2 OF 3
-----------------------------------	------------------------------	---------------------	-------------

- G. Legal papers which are in a prisoner's personal property may be searched for contraband but shall not be read unless there is reasonable cause to believe they are not truly legal correspondence. A prisoner who believes the confidentiality of his/her legal documents has been violated, may file a grievance.

PROVISION OF CORRESPONDENCE MATERIAL AND NOTARY SERVICES

- H. All prisoners must be provided means for filing a lawsuit and corresponding with attorneys. The institution shall provide writing materials (including envelopes and the equivalent of ten first-class postage stamps) at no cost to indigent prisoners (newsprint and pencils are acceptable). A prisoner who is in segregation may be deprived of writing paper and pencils, as provided in 04.05.120, "Segregation Standards," if they are being used in a manner which presents a serious threat to order and security.
- I. Handwritten documents are acceptable in the courts, but access to typewriters shall be allowed unless doing so would present a threat to the order and security of the institution. Institutions are not required to provide typewriters for prisoners' use except where specifically mandated in segregation mini-law libraries.
- J. All prisoners shall have access to a notary public. Prisoners in segregation shall be provided notary services within two business days of making a request for such services.
- K. Prisoners shall be allowed to become a notary public but the institution is not required to assist them in any way in doing so. The provision of notary services by a prisoner shall be subject to reasonable security restrictions. Prisoners shall not be permitted to charge a fee for notary services. If it is shown at a hearing conducted pursuant to R 791.3310 that they are doing so, their notary materials may be confiscated and disposed of as set forth in PD 04.07.112 "Prisoner Personal Property Control."

LEGAL ASSISTANCE FROM OTHER PRISONERS

- L. The Department is not required to ensure that a prisoner who does not have an attorney is provided assistance from other prisoners in legal matters, nor is any institution required to establish a procedure or mechanism that ensures a prisoner the opportunity to provide such assistance or services to other prisoners. However, institutions shall not prohibit prisoners without counsel from requesting legal assistance from other prisoners within the same facility who may have the skills or ability to assist with litigation, nor shall any reprisals be made against a prisoner who assists other prisoners with legal matters. A prisoner who provides legal assistance shall not directly or indirectly receive compensation in money, goods or services for providing such assistance.
- M. To avoid exploitation of prisoners by others, including "jail house lawyers," the institution shall require that prisoners seeking or giving such legal assistance agree in writing as to the terms of any such arrangement. That agreement shall be on the "Legal Assistance Request and Agreement" form (CAJ-337), which must be approved by the Assistant Deputy Warden (ADW) or Camp Supervisor.
- N. A prisoner may request legal assistance from any other prisoner residing in the same institution. In determining whether to approve a request, the following factors will be considered:
1. If the prisoner requesting assistance has previously been found guilty of sexual misconduct with the prisoner from whom s/he wishes to receive legal assistance, the request will be denied;
 2. If the prisoner from whom assistance is requested has previously been found to have received money or other compensation for providing legal services, the request may be denied;
 3. If the ADW or Camp Supervisor determines that approval of the agreement would present a serious threat to the security of the institution, it may be denied but specific facts explaining the nature of the threat must be set forth in the denial;

DOCUMENT TYPE POLICY DIRECTIVE	EFFECTIVE DATE 02/19/1991	NUMBER 05.03.116	PAGE 3 OF 3
-----------------------------------	------------------------------	---------------------	-------------

4. If a prisoner is providing legal assistance to others, it can generally be assumed that s/he does not need legal assistance;
 5. A prisoner will be allowed to receive legal assistance from only one prisoner at a time.
- O. In reviewing requests for legal assistance, it must be kept in mind that prisoners have a constitutional right of access to the courts and obtaining assistance from another prisoner is one of the ways that constitutional right is exercised. Thus, a denial of a legal assistance agreement must be carefully considered.
 - P. A prisoner whose request for legal assistance has been denied may appeal that denial through the grievance procedure.
 - Q. Prisoners in general population who are parties to a legal assistance agreement may request joint law library time, or other arrangements, to meet to discuss their litigation. If either party to a legal assistance agreement is in segregation (protective, administrative or punitive), all assistance shall be handled through written correspondence which may be read by staff.
 - R. The institution shall make no effort to enforce any terms agreed to between the parties, nor shall the agreement interfere with regular institutional programming or inter-institutional transfers. If a party to an agreement is transferred or classified to segregation prior to completion of work on a case, the assistance may continue through written correspondence, if the parties so desire. However, such correspondence will be subject to Department rules and policies on correspondence between prisoners, including the right to staff to read such correspondence.
 - S. Violation of the terms of a legal assistance agreement or the requirements of this policy may result in disciplinary action and termination of the agreement. Prisoners who offer their services as "jail house lawyers" but refuse to conform to the requirements of this policy may be restricted from assisting other prisoners or doing any legal work other than their own. A prisoner whose legal assistance agreement is terminated or who is restricted from performing any legal work for others shall be given a hearing pursuant to R 791.3310 to establish the basis for the termination or restriction.
 - T. Prisoners who are co-defendants in a criminal case or co-plaintiffs in a lawsuit shall be allowed to enter into a legal assistance agreement, if the above requirements are met. However, if they do not qualify to enter into a legal assistance agreement, they must handle their joint litigation or appeal by written correspondence. Such correspondence shall be treated in the same manner as all regular correspondence between prisoners, that is, it may be read by staff. Staff shall make every effort to ensure that all correspondence regarding legal matters is delivered as soon as possible.
 - U. If correspondence between prisoners which is alleged to be legal correspondence is found to contain material which is a threat to the security of the institution (e.g., escape plans; coded messages; other prohibited material), violates Department policy or is determined not to be about legal matters, an appropriate hearing shall be held.
 - V. If the prohibited material constitutes a major misconduct violation, a ticket shall be written and the hearing conducted by the Hearings Division. In all other cases, the hearing may be conducted pursuant to R 791.3310. If the correspondence is found to contain prohibited material as described above, or to pertain to non-legal matters, the institution may cancel the Legal Assistance Agreement.

OPERATING PROCEDURE

- W. Wardens shall ensure that an operating procedure implementing this policy is in effect within 60 days of its effective date. A copy of the operating procedure shall be submitted to the appropriate Assistant Deputy Director, BCF.

RB:OPH:01/29/91